

"You are charged that you on or about the 17th day of January, 1959, at about 4.35 p.m. at Jurong Road, 8½ m.s. caused the death of one Ang Kwee Eah, M/31, by doing a negligent act not amounting to Culpable Homicide namely by driving motor bus SH 176 in a negligent manner and that you have thereby committed an offence punishable under section 304A of the Penal Code."

At the commencement of the hearing in the District Court Counsel for the appellant applied for particulars of the negligence alleged.

The application was refused by the learned District Judge on the authority of *Public Prosecutor v. Chang Wan Seng*⁽¹⁾ where Wilson J. held that an accused person was not entitled to particulars of negligence under section 304A because it was tantamount to a request for particulars of the evidence which the prosecution proposed to call.

The trial thereupon proceeded. The undisputed fact was that a motor bus driven by the appellant was involved in a collision with a motor lorry at the 8½ m.s. Jurong Road as a result of which the driver of the motor lorry was killed.

The eye-witness evidence for the prosecution as to the accident was supplied by passengers in the appellant's motor bus.

At the close of the case for the prosecution a number of versions as to how the accident occurred were disclosed. After carefully examining the evidence I was unable to arrive at any conclusion as to how the accident happened.

One witness said the motor lorry was stationary at the time of the collision while others said it was in motion and travelling along the road.

Another witness said that prior to the accident the bus swerved to the right on to its wrong side before it crossed the bridge while others maintained it only swerved to the right after it crossed the bridge. There were different versions as to the behaviour of the bus on the road prior to the accident and also as to its speed.

Notwithstanding this the learned District Judge called on the appellant for his defence and subsequently convicted him.

I shall deal firstly with the charge which in my view did not contain sufficient particulars to enable the defendant to know the case he had to meet.

The charge as framed was nothing more in effect than an allegation that the appellant did a negligent act in a negligent manner.

It is true that the charge followed the form set out in Ratanlal's Law of Crimes 19th Ed. 785 but these forms are only meant to serve as a general guide and bear no relation to any particular set of facts. Again it is not sufficient, as a general rule, merely to copy out the words of the section. The charge must be so framed as to enable the appellant to know with precision and in detail the case against him which he has to meet. It must have particular reference and be adapted to the facts of each particular case. An accused person must not be left in a state of

A doubt as to the allegations against him or as to which of several alternatives he is alleged to have been guilty of.

It is the duty of the Court to satisfy itself that the charge is on the face of it properly framed before an accused person is called upon to plead to it. Merely to tell the appellant in this case that he was charged with doing a negligent act negligently is in my opinion insufficient. On that ground alone in my opinion this appeal must succeed.

Similar views were expressed by Whitley Ag. C.J. in *Public Prosecutor v. Lee Pak*⁽²⁾ with which I respectfully agree. That case was not cited to the Court in *Chang Wan Seng's*⁽¹⁾ case to which I have referred and from which I find myself compelled to dissent or to the learned District Judge who tried the appellant. If it had been it is conceivable, I think, that they might have come to a different conclusion.

With regard to the differing accounts of the accident given by the prosecution witnesses it was, in my view, incumbent on the Court in the light of the provisions of section 172(f) of the Criminal Procedure Code at the close of the case for the prosecution to make up its mind as to which, if any, of the possible but incompatible versions of the facts had been proved.

It is not enough that the learned District Judge in his grounds of decision should in effect have done so.

The appellant at the conclusion of the prosecution case was entitled to know which of the several alternative versions of the accident the Court found to be satisfactorily established and which constituted negligence.

If it found itself unable to decide which account of the accident was the true one then the prosecution had failed to make out their case and the appellant should not have been called on for his defence. The learned District Judge should have come to a decision regarding the facts before calling upon the defence.

For these reasons I allowed the appeal and quashed the conviction and sentence.

Appeal allowed.

Solicitors: *Rodyk & Davidson.*

HONG TECK GUAN & ANOR. v. LAM SOON CANNERY LTD.

[C. A. (Tan Ah Tah, Buttrose and Wee Chong Jin JJ.)
January 16, 1959]

[Singapore — Civil Appeal No. 15 of 1959]

Mercantile Law — Account stated — Statement of account — Letter referring to statement of account confirming and agreeing thereto — Letter written by clerk on express instructions — Repudiation.

Practice and Procedure — Claim — Sum claimed in writ — When not binding on claimant.

Practice and Procedure — Translation — Principles of making.

To constitute an account stated the following essential elements must be present, first, there must be a definite amount due from one party to another, secondly, there must be an admission of a debt and thirdly, there must be a debt due from one party to another. The admission need not necessarily be of the whole amount claimed.

If a person employs another as an agent in a character which involves a particular authority, he cannot by a secret reservation divest himself of that authority.

The sum claimed in the writ does not and cannot bind the claimant and provided the amount awarded is less than the amount sued for it is immaterial.

Making a translation is not a mere question of trying to find out in a dictionary the words which are given as the equivalent of the words of the document; a true translation is the putting into English that which is the exact effect of the language used under the circumstances. Not only is a competent translator required but if the words in the foreign country had in business a particular meaning different from their ordinary meaning an expert will be admitted to say what that meaning is.

In this appeal the parties commenced trading together in 1949 when the respondents were a partnership under the firm name of Lam Soon Cannery Co. In 1950 the partnership was converted into a limited company — the respondents, and the appellants continued to trade with them. Between December 1951 and February 1952 a quantity of copra was shipped by the appellants to the respondents and although a number of cables passed between the parties no agreement as to the price was arrived at. In August 1952 the 1st appellant came to Singapore and there was a discussion at the respondents' office between their managing director and the 1st appellant as to the price of the copra. It was then agreed between the parties that the respondents would buy the copra at \$31 per picul. A draft statement of account was then prepared and shown to the 1st appellant and he requested the respondents to forward it to his office in North Borneo. This account which was dated August 27, 1952, was accordingly despatched to the appellants under a covering letter dated August 29, 1952. This account showed an outstanding balance due by the appellants to the respondents of \$67,216.29. The respondents received a letter from the appellants dated September 6, 1952 acknowledging the respondents' letter of August 29 and confirming the agreement regarding the price of the copra. No objection was raised to the account in this letter by the appellants and on September 20 and October 6, 1952 amounts of \$2,300 and \$3,000 respectively were paid by them to the respondents. These sums, which were voluntarily abated by the respondents from their claim, deducted from the outstanding balance disclosed in the account of August 27, 1952 reduced it to \$61,916.29 the amount in fact actually claimed at the trial. Subsequently the respondents received from the appellants a letter dated December 27, 1952 which they contend constituted an account stated in that it confirmed and agreed the account of August 27, 1952. The material paragraph of the letter, which was written in Chinese, was translated by two experts, and the version accepted by the Court reads: "Concerning my account with you, according to the rough calculation of my humble clerk, the sum owing is about more than sixty thousand dollars only."

Held: in the circumstances of the case there was *consensus ad idem* between the parties as to the amount due and payable, and the letter dated December 27, 1952 constituted an account stated as to the sum of \$60,000. The admission of liability was absolute and unqualified and not conditional upon the happening of any event.

Cases referred to:—

- (1) *Grundy v. Townsend* (1888) 4 T.L.R. 402, C.A.
- (2) *Chatenay v. Brazilian Submarine Telegraph Co.* [1891] 1 Q.B. 79, 82.

- (3) *Edmunds v. Bushell* (1865) L.R. 1 Q.B. 97, 99.

COURT OF APPEAL.

J. E. D. Elias for the appellants.

G. S. Hill for the respondents.

Cur. Adv. Vult.

Tan Ah Tah J.: This is an appeal from a judgment of Chua, J. in which it was held that the plaintiffs were entitled to recover from the defendants the sum of \$60,000, with interest, upon an account stated.

According to the evidence the defendants, who were partners in a firm carrying on business under the style of Teck Guan Fishing Co. at Tawau, British North Borneo, commenced to have business dealings in 1949 with a partnership carrying on business in Singapore under the firm name of Lam Soon Cannery Co. In 1950 Lam Soon Cannery Co. was converted into a limited company and it is this company who are the plaintiffs in this case. The whole of the business carried on by the firm of Lam Soon Cannery Co. was taken over by the plaintiffs who continued to have business transactions with the defendants.

In the course of their business with the plaintiffs the defendants shipped a quantity of copra to the plaintiffs between December 1951 and February 1952. No agreement was reached between the parties as to the price at which the copra was to be sold and by the 7th February 1952 the plaintiffs had in their godown 9,297 bags of copra which had been shipped to them by the defendants. In August 1952 the first defendant came to Singapore and discussed the question of the price of the copra with Ng Keng Soon, the plaintiffs' managing director. It was thereupon agreed that the plaintiffs would buy the copra at \$31 per picul.

After the price had been agreed upon, a draft statement of account was prepared and shown to the first defendant, who requested the plaintiffs to send it to his office in North Borneo. The statement of account which was dated the 27th August 1952 was in due course posted to the defendants together with a covering letter dated the 29th August 1952; the account showed a balance of \$67,216.29 due by the defendants to the plaintiffs.

Subsequently, there was an exchange of correspondence in Chinese between the parties and eventually the plaintiffs received a letter dated the 27th December 1952 from the defendants. The learned trial judge held that this letter referred to the statement of account dated the 27th August 1952, that there was a definite acknowledgement in the letter by the defendants that they were indebted to the plaintiffs in the sum of \$60,000 and that there was therefore an account stated as to \$60,000.

One of the grounds of appeal relied upon by the defendants is that the letter dated 27th December 1952 was not addressed to the plaintiffs but to the partnership firm of Lam Soon Company.

It is contended by counsel for the defendants that, if the letter contained an admission, it was an admission made to a third party and not to the plaintiffs. On this point it is to be observed that there is nothing in the record to show that a firm carrying on business under the style of Lam Soon Company ever existed. Evidence was therefore admissible to show what the words "Lam Soon Company" meant. Such evidence was adduced in the court below and is dealt with in the judgment of the learned trial judge. After considering the matter he states in his judgment that there is no doubt from the evidence that the defendants were at the material time dealing not with Lam Soon Cannery Co. but with the plaintiffs. There was ample evidence on which the learned trial judge could make this finding of fact, and, in my opinion, he was justified in making it. I am satisfied that the letter dated the 27th December 1952 was addressed to the plaintiffs and not to a third party. This ground of appeal therefore fails.

The main ground of appeal relied upon by the defendants is that the letter dated 27th December 1952 did not constitute an account stated between the parties. It is submitted by counsel for the defendants that the parties never agreed upon a figure and that there was no *consensus ad idem* between them as to the amount alleged to be due. He therefore contends that there was no account stated between the parties.

It is settled law that to constitute an account stated the following essential elements must be present, first, there must be a definite amount due from one party to another, secondly, there must be an admission of a debt and thirdly, there must be a debt due from one party to another. It is also clear from the facts and judgment in *Grundy v. Townsend*⁽¹⁾ that the admission need not necessarily be of the whole amount claimed.

The defendants have never denied receiving the statement of account dated the 27th August 1952 and the plaintiffs' letter of the 29th August 1952. What they say is that there was no admission of any debt owing by them as their letter dated the 27th December 1952 was not a reply to the plaintiffs' letter of the 29th August 1952 and therefore had no relevance to the statement of account dated the 27th August 1952.

The letter dated 27th December 1952 was translated by Professor Tseng, an expert witness called by the plaintiffs, and by Mr. Tsan, an expert witness called by the defendants. These two translations are fully set out in the judgment of the learned trial judge. It will be sufficient, for the purposes of this judgment, to set out the two different translations of the second paragraph of the letter.

Professor Tseng's translation is as follows:—

"Concerning my account with you, according to the rough calculation of my humble clerk, the sum owing is about more than sixty thousand dollars only."

Mr. Tsan's version of the second paragraph is as follows:—

"With regard to your honourable account, according to our humble recording department's rough and non-exhausting calculation the amount that is remaining, approximately does not reach the figure of \$60,000 over, left, or right (in metaphor i.e. the left or right side of, say, my host at banquet, in other words, on a Higher or Lower position, or "more or less")."

It is clear from a perusal of Mr. Tsan's translation that he has translated the second paragraph literally. He admitted in cross-examination that the function of a translator in the Courts is to translate into ordinary English language and stated that he had made a literal translation as he had been asked to do so. The result is that his translation has been more of a hindrance than a help in this case.

During his cross-examination Mr. Tsan admitted that his translation was wrong in at least two important respects. He agreed with counsel for the plaintiffs that the phrase "the amount that is remaining" should have read "the amount that is owing." He also agreed that the phrase "does not reach" was not a proper translation of the original. In my opinion, having regard to these admissions and to the evidence given by the two expert witnesses, Professor Tseng's translation is clearly to be preferred to that of Mr. Tsan.

When the meaning of the whole of the letter dated the 27th December 1952 is considered, the following passage in the cross-examination of Mr. Tsan is, in my opinion, of great significance:—

"The clearing up in Singapore would be for the balance over the \$60,000 and after clearing up the balance including the \$60,000 would be paid."

It is clear, in my judgment, that the letter dated the 27th December 1952 contains a definite admission that the defendants were indebted to the plaintiffs in the sum of at least \$60,000. Whether there was any balance due in excess of that amount was to be the subject of discussion between the parties when the first defendant came to Singapore. It is submitted by counsel for the defendants that the letter dated the 27th December 1952 had nothing to do with the statement of account dated 27th August 1952 as it was written in reply to a letter recently received by the defendants from the plaintiffs. This argument is far from conclusive as much depends upon what a person means when he writes about a recent event; the defendants gave no evidence on this point. It is true that letters passed between the parties between the 27th August 1952 and the 27th December 1952 but the evidence shows that only one statement of account was sent to the defendants. Having regard to these considerations the learned trial judge was, in my opinion, justified in reaching the conclusion which he did that the letter dated the 27th December 1952 referred to the statement of account dated the 27th August 1952. It follows therefore, in my judgment, that there was *consensus ad idem* between the parties as to the amount due and payable, and that the letter dated the 27th December 1952 constituted an account stated as

to the sum of \$60,000. I am also satisfied that the admission of liability was absolute and unqualified and not conditional upon the happening of any event.

It is contended by counsel for the defendants that on the 27th December 1952 there was still in existence an account between the defendants and the partnership firm of Lam Soon Cannery Co. in which there was a credit balance of \$83,611.34 in favour of the defendants and that the letter dated the 27th December 1952 in fact referred to this account. In view of the finding of fact, to which I have already referred, that the defendants were at the material time dealing with the plaintiffs and also of the fact that the letter dated the 27th December 1952 was addressed to the plaintiffs, there is, in my opinion, no substance in this argument. For the same reason there is also, in my opinion, no substance in another contention put forward by counsel for the defendants to the effect that there were a number of transactions and a continuing account between the defendants and the firm of Lam Soon Cannery Co., or alternatively the plaintiffs, between the 27th August 1952 and the 27th December 1952, and that there were a number of disputes arising out of such transactions and in relation to items of such account which were outstanding and had not been settled between the parties on the 27th December 1952. With regard to this contention it is also to be observed that there was no evidence to support counsel's argument, which appeared to be based upon nothing more concrete than mere speculation.

It is true that the letter dated the 27th December 1952 does not expressly state which party was the debtor but the evidence, which is referred to by the learned trial judge in his judgment, clearly establishes that there was a debt due by the defendants to the plaintiffs. I have already expressed my opinion that the letter contains an admission that the defendants were indebted to the plaintiffs in the sum of at least \$60,000. There was, in my view, nothing vague about that admission. If there was anything vague about the letter it was only in respect of the balance in excess of the sum of \$60,000. It was the question of this balance which was to be discussed by the parties when the first defendant came to Singapore. It might be that the amount of the balance would have to be calculated during or after the discussion but, as I have already stated, the admission that the defendants were indebted to the plaintiffs in the sum of at least \$60,000 was definite, absolute and unqualified.

Another ground of appeal is that Bui Keng Sui, the person who signed the letter dated the 27th December 1952, had no authority to do so. It is also submitted by counsel for the defendants that Bui Keng Sui was not authorised by the defendants to settle accounts on their behalf and that the defendants had previously given express notice to the plaintiffs by a letter dated the 11th April 1952 that they would not be bound by any document relating to accounts unless it was

A personally signed by the first defendant. It is clear from the evidence of Bui Keng Sui that the letter dated the 27th December 1952 was written and signed by him on the express instructions of the first defendant and that it was intended that the plaintiffs should rely on it. In my opinion, on this evidence alone, this ground of appeal must fail. But even if the defendants were able to rely on the letter dated the 11th April 1952 as imposing some restriction of authority, the evidence of Mr. Ng Aik Huan, who was called as a witness with special knowledge of the customs of Chinese merchants, clearly established that the letter dated the 27th December 1952 did not come within the scope of the letter dated the 11th April 1952. There was therefore no restriction on Bui Keng Sui's authority to write and sign the letter dated the 27th December 1952.

During the argument counsel for the defendants raised the objection, which had not been raised in the court below, that the plaintiffs have altered their position by claiming different amounts at different times. In my opinion no valid objection can be taken at this stage on this point on procedural or other grounds as the amount awarded by the learned trial judge was less than the amount claimed.

For the reasons which I have stated the appeal is dismissed with costs.

Buttrose J.: This is an appeal from a judgment of Chua, J., adjudging that the respondents recover from the appellants the sum of \$60,000 together with interest thereon at the rate of six per centum per annum from the 27th December 1952 to judgment.

In the action the respondents sued for the sum of \$64,138.95 being the amount found to be due from the appellants to the respondents on an account settled between them in writing and contained in a letter in Chinese dated the 27th December, 1952, addressed by the appellants to the respondents.

The learned trial judge held that there was a definite acknowledgment in this letter by the appellants that they were indebted to the respondents in the sum of \$60,000 and there was therefore an account stated as to that amount.

A number of defences were raised on the pleadings but the only real issue of substance, in my view, which emerged at the trial and on the hearing of this appeal was as to whether the letter of the 27th December, 1952, did constitute an account stated between the parties in the sum of \$60,000.

The facts and circumstances leading up to the writing of this letter of the 27th December, are of some importance and may be briefly summarised as follows.

The parties commenced trading together in 1949 when the present respondents were a partnership under the firm name of Lam Soon Cannery Co. In 1950 the partnership was converted into a limited company — the respondents — which took over the whole of the business

formerly carried on by the firm of Lam Soon Cannery Co. and the appellants continued to trade with the respondents.

Between December 1951 and February 1952 a quantity of copra was shipped by the appellants to the respondents and although a number of cables passed between the parties no agreement as to the price was arrived at. In August 1952 the 1st appellant came to Singapore and there was a discussion at the respondents' office between Ng Keng Soon the managing director of the respondent company and the 1st appellant in the presence of Ng Keng Ann the brother of Ng Keng Soon as to the price of the copra.

It was then agreed between the parties that the respondents would buy the copra at \$31 per picul.

A draft statement of account was then prepared and shown to the 1st appellant and he requested the respondents to forward it to his office in North Borneo. This account which was dated the 27th of August, 1952, was accordingly despatched to the appellants under a covering letter dated the 29th of August, 1952. This account showed an outstanding balance due by the appellants to the respondents of \$67,216.29. The respondents received a letter from the appellants dated the 6th September, 1952, acknowledging the respondents' letter of the 29th August, 1952, and confirming the agreement regarding the price of the copra at \$31 per picul.

No objection was raised to the account in this letter by the appellants and on the 20th September and 6th October, 1952, amounts of \$2,300 and \$3,000 respectively were paid by them to the respondents. These sums, which were voluntarily abated by the respondents from their claim, deducted from the outstanding balance disclosed in the account of the 27th August, 1952, reduced it to \$61,916.29 the amount in fact actually claimed at the trial.

The respondents then received from the appellants the vital letter dated the 27th December, 1952, which they contend constituted an account stated in that it confirmed and agreed the account of the 27th August, 1952, despatched to them under cover of the letter of the 29th August, 1952.

There was ample evidence, in my view, if accepted by the learned trial judge to justify his finding that this letter of the 27th December, 1952, referred to the account of the 27th August, 1952, and I can see no reason for disturbing it. A number of matters were urged in argument before us as indicating that the trial judge was wrong in so deciding but there was, in the view I take, no substance in them.

The real core of the problem here was did the letter of the 27th December, 1952, coupled with this account of the 27th August, 1952, constitute an account stated between the parties. Did the letter amount to confirmation of the account and if so to what extent.

A The essential elements of an account stated are conveniently and concisely set out in *Chitty on Contracts* 21st Ed. at pages 119-123 and it is unnecessary for me to re-state them.

B The principles to be applied in deciding whether an account stated in either of its types has been constituted in law have been enunciated in a number of authorities which were cited to us and I do not propose to refer to them as there was very little dispute, as I understood it, on the law.

C The issue was as to the application of those principles to the letter of the 27th December, 1952, and the real question for determination was what did that letter mean.

Two translations of it were tendered in evidence in the Court below, one on behalf of the respondents and the other on behalf of the appellants and they are fully set out in the judgment of the learned trial judge.

D It will however, I think, be convenient to set out the two opposing versions of the material paragraph in the letter.

Professor Tseng, on behalf of the respondents, translated it as follows:—

"Concerning my account with you, according to the rough calculation of my humble clerk, the sum owing is about more than sixty thousand dollars only."

E Mr. Tsan, on behalf of the appellants, translated it as follows:—

F "With regard to your honourable account, according to our humble recording department's rough and non-exhausting calculation the amount that is remaining, approximately does not reach the figure of \$60,000 over, left or right (in metaphor i.e. the left or right side of, say, my host at banquet, in other words, on a Higher or Lower position, or "more or less")."

G It appeared that Mr. Tsan while admitting that the function of a translator in the Courts is to translate into the ordinary English language stated that he had not done so. His evidence was that in this case he had translated literally as he had been asked to do so. I think this was unfortunate.

H As was indicated by Lord Esher M.R. in *Chatenay v. Brazilian Submarine Telegraph Company*⁽²⁾ at page 82, making a translation is not a mere question of trying to find out in a dictionary the words which are given as the equivalent of the words of the document; a true translation is the putting into English that which is the exact effect of the language used under the circumstances. Not only is a competent translator required but if the words in the foreign country had in business a particular meaning different from their ordinary meaning an expert will be admitted to say what that meaning is.

I The learned trial judge preferred the translation of Professor Tseng to that of Mr. Tsan and on the evidence I agree with him. It was contended on behalf of the respondent that Mr. Tsan's translation was subject to two major recantations and under cross-examination, I feel bound to say, he appeared to shift his ground. In the first place I think the phrase "the sum

owing" in Professor Tseng's translation is the correct one and not the phrase "the amount that is remaining" in Mr. Tsan's translation.

It was also I think clearly established that the phrase "does not reach" in Mr. Tsan's translation is wrong. The Chinese character used denotes — 'extra' or 'over' 'more than' — a symbol of excess — as translated by Professor Tseng.

In cross-examination Mr. Tsan admitted that the letter could mean that the minimum sum was \$60,000 and thereafter there was vagueness and that the clearing up in Singapore (referred to in the letter) would be for the balance over the \$60,000 and after clearing up the balance including the \$60,000 would be paid.

The only reasonable inference to be drawn from the evidence on this aspect of the case was that there was no dispute or vagueness up to \$60,000 but only with reference to any amount in excess of that figure.

The learned trial judge having considered both the translations and the evidence material thereto was satisfied that the letter of the 27th December, 1952, referred to the account of the 27th August 1952 and that there was a definite acknowledgment in the letter by the appellants that they were indebted to the respondents in the sum of \$60,000 and there was therefore an account stated as to this sum.

Furthermore the meeting between the 1st appellant and the respondents' managing director when the price of the copra was agreed and the amount confirmed, the part payment by the two sums to which I have referred and the absence of any objection or protest from the appellants when the account was rendered affords, in my view, corroboration of the respondents' case.

There was, in my view, evidence to support the trial judge's findings of fact and I can find no adequate reason for disturbing them.

The letter of the 27th December, 1952, coupled with the account of the 27th August, 1952, constituted, in my opinion, an account stated in law in that it confirmed and agreed the account to the extent of \$60,000 while disputing the balance in excess of that figure.

There was overwhelming evidence, in my opinion, of the existence of a debt and that it was due and owing by the appellants to the respondents. The agreed minimum amount of this debt established by the evidence and so found by the trial judge was \$60,000. There was undoubtedly vagueness, uncertainty and dispute with direct reference to any balance due over and above that sum and it was this disputed balance which was to be the subject of discussion in Singapore between the parties.

The admission of or the agreement as to this liability of \$60,000 by the appellants was not conditional on the 1st appellant's visit to Singapore and a discussion between him and Ng Keng

A Soon the respondents' managing director. On the evidence the only matter to be settled was the balance in excess of the amount of \$60,000 and it was this balance only which was to be the subject of discussion and settlement in Singapore.

The admission or agreement as to the sum of \$60,000 was, in my opinion, absolute.

B Now the appellants sought to establish that this letter of the 27th December, 1952, referred to a continuing account between the parties but as this running account included the account of the 27th August, 1952, this was immaterial to the respondent's case as the balance of the running account was at all material times in favour of the respondents in excess of the amount claimed. C It was also suggested that the letter of the 27th December, 1952, referred to an account between the appellants and Lam Soon Cannery Co. for \$83,611.34 but there was no evidence whatever to support this suggestion which was nothing more than pure speculation.

D Great stress was laid by the appellants' counsel on what can best be described as the variations in the figures claimed. The sum originally sued for was \$64,138.95, the account of the 27th August, 1952, disclosed a figure of \$67,216.29, the actual sum claimed at the trial was \$61,916.29. This latter figure represented E the \$67,216.29 less the payments to which I have referred. I am myself unable to attach any significance to the matter. The obvious figure to have sued for would have been \$67,216.29 the amount shown in the account and this was conceded by Counsel for the respondent. The reason proffered for suing for \$64,138.95 was F that it perhaps represented a more accurate figure equitably due but in any event the point, in my view, is not material. The trial judge in fact found that \$60,000 was the correct figure constituted by the account stated. The sum claimed in the writ does not and cannot bind the respondents and provided the amount awarded is G less than the amount sued for it is immaterial.

It was also contended on behalf of the appellants that they were at all material times dealing with Lam Soon Co. and not the respondents Lam Soon Cannery Ltd.

H There is, in my view, no substance in this argument. In the first place there is no firm as Lam Soon Co. and evidence was admissible to show what it meant. All the material transactions so far as the respondents were concerned were between them (as a limited company) and the appellants. The appellants in order to succeed on this ground must show as a fact that I the transactions were between them and the partnership firm of Lam Soon Cannery Co. and were so regarded by both parties. This they have failed to do nor have they pleaded mistake. The respondents' letterheads at the material time bore the heading "Ltd." including the two receipts for the part payments to which I have already referred.

I am satisfied on the evidence that at the material time the appellants were in fact dealing with the respondents and not the partnership and were fully aware of it.

It was further argued on behalf of the appellants that the person who signed the letter of the 27th December, 1952, was not authorised to do so.

As was pointed out by the trial judge the evidence of the appellants' witness Bui Keng Sui who was their correspondence clerk and who wrote the letter of the 27th December, 1952, clearly established that the letter was written on the express instructions of the 1st appellant and it was intended that the respondents should rely on it. That being so it is not, in my view, now open to the appellants to rely on this defence but even if they could the respondents were on the evidence entitled to assume that the signature referred to was that appearing on the letter viz., the 1st appellant's.

The respondents relied on the well established principle enunciated by Cockburn C.J. in *Edmunds v. Bushell*⁽³⁾ that if a person employs another as an agent in a character which involves a particular authority, he cannot by a secret reservation divest himself of that authority. Finally the letter, as did all the others, bore the appellants' chop which according to the evidence made it binding.

In the result the appeal fails on all points and must be dismissed with costs.

Wee Chong Jin J.: I agree that this appeal should be dismissed.

Appeal dismissed.

Solicitors: *Elias Bros.; Rodyk & Davidson.*

CHOO SEE KEAN & ORS. v. PUBLIC PROSECUTOR

[A. Cr. J. (Hill J.) February 24, 1959]

[Alor Star—Criminal Appeal No. 70 of 1958]

Gaming — Characters lottery — Expert evidence — Description of modus operandi — Not necessary — Description and explanation of exhibits.

Characters lottery constitutes a lottery within the meaning of the Common Gaming Houses Ordinance, and the summary Courts have for their guidance descriptions of the operation of these lotteries in judgments of the High Court and by the full Court of Appeal in *Lee Seow v. Public Prosecutor*⁽²⁾.

Descriptions by expert witnesses of the *modus operandi* of the characters lottery are no longer necessary except where a Magistrate of his own accord and for his own further enlightenment requires such evidence. All that is now necessary is a description and explanation by the expert witness of the exhibits and careful examination and consideration of them by the trial Magistrate in the light of the expert's opinion to enable him to form his own independent judgment.

A Cases referred to:—

- (1) *Teoh Ng Choon & Ors. v. Public Prosecutor* [1955] M.L.J. 58.
- (2) *Lee Seow v. Public Prosecutor* [1958] M.L.J. 245, C.A.

MAGISTRATE'S CRIMINAL APPEAL.

B *Lee Thean-Chu* for the appellants.

B. Sheldon (Federal Counsel) for the respondent.

Cur. Adv. Vult.

Hill J.: The appellants were convicted and fined by the Sungei Patani Magistrate for an offence contrary to section 4(1)(c) of the Common Gaming Houses Ordinance, No. 26 of 1953. In so far as the facts are concerned it is sufficient to say that all four were caught red-handed carrying on a public lottery when a party of police raided a saw-mill at Sin Hup Huat.

During the course of the trial a newspaper was received in evidence to prove the date of a race meeting and this gave rise to one of the grounds of appeal. I am not concerned, however, with the question of the admissibility or otherwise of newspapers for it is no part of the prosecution case in proceedings of this nature to prove that a race meeting in fact took place on a particular day. In any event, this ground of appeal was abandoned by appellants' Counsel.

The only question I have to consider is whether the evidence of the expert witness was satisfactory or so inadequate that the Magistrate should not have arrived at the decision he did.

The expert witness in this case was a Detective Police Constable attached to C.I.D. Headquarters, Alor Star. He omitted to give any description whatever of the manner in which the Character's Lottery is operated, but he did give detailed evidence of his reasons for the opinion that the exhibits in the case related to betting and staking in the Character's Lottery. These exhibits were personally examined by the learned Magistrate and he agreed with the expert's opinion after such careful examination.

As already stated the four appellants were caught red-handed during a police raid. Their conduct was such that the only reasonable inference that could be drawn was that all had guilty knowledge and that they were acting jointly.

It is obvious that the Magistrate used his own knowledge and experience regarding the manner in which these lotteries are operated without any assistance from the expert witness, but in coming to his decision regarding the exhibits the Magistrate had ample assistance from this witness and also formed his own conclusions. In the result he rejected the defence and convicted the four appellants.

In my decision in *Teoh Ng Choon & Ors. v. Public Prosecutor*⁽¹⁾ I endeavoured to explain a Magistrate's duty, as I saw it, expressly in relation